

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Caitlin Schnur	Team: Team # 6	CCRB Case #: 200817525	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/28/2008 8:30 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 2/28/2010	EO SOL 2/28/2010	
Date/Time CV Reported Thu, 12/04/2008 1:20 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 12/04/2008 1:20 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Erik Sherar	28633	942538	043 PCT
2. POM Miguel Iglesias	15012	941926	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Erik Sherar	Abuse: On March 11, 2008, Officer Erik Sherar questioned § 87(2)(b)	§ 87(2)(b)
B.POM Erik Sherar	Abuse: On August 28, 2008, Officer Erik Sherar stopped § 87(2)(b)	§ 87(2)(b)
C.POM Miguel Iglesias	Abuse: On August 28, 2008, Officer Miguel Iglesias stopped § 87(2)(b)	§ 87(2)(b)
D.POM Erik Sherar	Abuse: On August 28, 2008, Officer Erik Sherar searched § 87(2)(b)	§ 87(2)(b)

### Case Summary

§ 87(2)(b) filed this complaint in-person with the CCRB on December 4, 2008 regarding separate incidents involving the same police officers that occurred on March 11, 2008 and August 28, 2008 (encl. C1 – C2).

On March 11, 2008, § 87(2)(b) was approached by officers as she was waiting for her daughter in the lobby of § 87(2)(b) in the Bronx. The following allegation occurred:

**Allegation A – Abuse of Authority:** On March 11, 2008, Officer Erik Sherar questioned

§ 87(2)(b) § 87(2)(g)

On August 28, 2008, § 87(2)(b) exited § 87(2)(b) in the Bronx and headed quickly to a nearby park. The following allegations occurred:

**Allegation B – Abuse of Authority:** On August 28, 2008, Officer Erik Sherar stopped

§ 87(2)(b)

**Allegation C – Abuse of Authority:** On August 28, 2008, Officer Miguel Iglesias stopped

§ 87(2)(b) § 87(2)(g)

**Allegation D – Abuse of Authority:** On August 28, 2008, Officer Erik Sherar searched

§ 87(2)(b) § 87(2)(g)

§ 87(2)(g)

### Results of Investigation

#### Civilian Statement

**Complainant:** § 87(2)(b)

- § 87(2)(b), African-American, 5'5" tall, brown eyes, dark hair. § 87(2)(b) did not provide her weight to the CCRB.

#### CCRB Testimony

§ 87(2)(b) was interviewed as a walk-in complainant on December 4, 2008 and her testimony is summarized below (encl. C3 – C7). On October 20, 2009, § 87(2)(b) provided clarifying details about both incident dates over the phone (encl. C8). On December 22, 2009, § 87(2)(b) provided clarifying details about the August 28, 2008 incident over the phone (encl. C9). The details obtained through these phone statements are incorporated into her testimony as appropriate.

#### March 11, 2008

At approximately 3:50 p.m. on March 11, 2008, § 87(2)(b) entered her building, § 87(2)(b) in the Bronx, and quickly went upstairs to her apartment. She left her bag (which contained her identification) upstairs and then rode the elevator down to the building's ground

floor. § 87(2)(b) exited the elevator and observed five to six officers wearing plainclothes come down the stairs and exit the building.

§ 87(2)(b) waited inside of the lobby for her daughter to arrive home from school. An officer, identified through the investigation to be Officer Miguel Iglesias, then re-entered the lobby and said to § 87(2)(b) “Excuse me, do you live here?” § 87(2)(b) said that she did. Officer Iglesias asked § 87(2)(b) to take him upstairs and open her apartment door. Because Officer Iglesias did not identify himself as an officer and because § 87(2)(b) lived on the § 87(2)(b) floor, she refused.

A second officer, identified through the investigation to be Officer Erik Sherar, then re-entered the lobby. Officer Iglesias asked § 87(2)(b) if she had identification with her, and § 87(2)(b) said that she did not. Officer Iglesias informed § 87(2)(b) that he could arrest her. Officer Iglesias asked § 87(2)(b) to open her mailbox and § 87(2)(b) refused. Officer Iglesias asked § 87(2)(b) to do so more than four times and, finally, § 87(2)(b) did so. § 87(2)(b) believed that Officer Iglesias looked inside of her mailbox. § 87(2)(b) gave the officers her name and address. Officer Sherar recorded this information, and the officers said that they were going to verify her residency. The officers then left.

### **August 28, 2008**

Between 8:00 p.m. and 9:00 p.m. on August 28, 2008, § 87(2)(b) exited § 87(2)(b) in the Bronx. There was a group of males gathered in front of the building. One of these males complained to § 87(2)(b) about a neighbor who constantly makes noise, and § 87(2)(b) briefly responded to this male. Based on her interaction with this male, § 87(2)(b) said that no officer who might have been watching her could have believed she engaged in a hand to hand transaction.

§ 87(2)(b) crossed the street and proceeded to walk briskly down § 87(2)(b), heading toward a nearby park. § 87(2)(b) was not running. § 87(2)(b) was across the street from the Monroe Projects when she noticed a dark brown vehicle that resembled a livery cab following her. Two officers, identified by § 87(2)(b) as the same officers involved in the March 11, 2008 incident (or, as Officers Iglesias and Sherar) jumped out of the vehicle and said, “Stop!” § 87(2)(b) felt that both officers effected the stop. At least a third officer, PO3, remained inside of the vehicle. § 87(2)(b) could not describe PO3.

§ 87(2)(b) was so frightened that she urinated on herself. In her December 4, 2008 statement, § 87(2)(b) said that Officer Iglesias did most of the talking during this interaction. It was not clear from her December 4, 2008 testimony precisely which questions Officer Iglesias asked her. In her December 22, 2009 phone statement, § 87(2)(b) was able to clarify which officers asked her some of the questions; from this phone statement, it appeared that Officer Sherar asked most of the questions. An officer said, “Why are you running from us?”, and § 87(2)(b) said, “Running from you? I don’t even know who are!” Officer Sherar said, “Open your mouth,” and § 87(2)(b) did so. Both of the officers looked into her mouth; neither put a finger inside of her mouth. Of her own volition, she gave an officer her identification. The officer wrote down information from her identification. Officer Sherar then asked § 87(2)(b) what had happened to her arm, which was in a sling. § 87(2)(b) said, “I fell, why?” Officer Sherar asked, “Do you use?”, and § 87(2)(b) replied, “Use what?” Officer Sherar replied, “Drugs.” § 87(2)(b) said, “No, do you?” The officers then left.

## **NYPD Statements:**

### **Subject Officer: ERIK SHERAR**

- § 87(2)(b) -old, Caucasian, 6'2" tall, 270 pounds, brownish-reddish hair, blue eyes
- March 11, 2008: Assistant to the Field Intelligence Officer, partner unknown, on foot, plainclothes, 12:00 p.m. to 8:35 p.m. (as per Tour 3 Roll Call)
- August 28, 2008: Assistant to the Field Intelligence Officer, Sergeant Trujillo, possibly in an unmarked RMP, plainclothes, 12:25 p.m. to 10:35 p.m.

### **March 11, 2008**

#### **UF-250** § 87(2)(b)

On March 11, 2008, Officer Sherar prepared UF-250 § 87(2)(b) whom the investigation has determined is actually § 87(2)(b) (encl. D2). § 87(2)(b) was stopped at approximately 1:50 p.m. inside of § 87(2)(b) in the Bronx, which is a NYCHA location. § 87(2)(b) was stopped for suspected criminal trespass. She was observed for one minute prior to the stop, during which time she displayed actions indicative of engaging in a drug transaction. The UF-250 says that § 87(2)(b) was neither frisked nor searched.

### **CCRB Testimony**

On November 20, 2009, Officer Sherar provided a CCRB statement (encl. D5 – D7). He did not have his memo book for March 11, 2008.

At approximately 1:50 p.m.<sup>1</sup> on March 11, 2008 in the vicinity of § 87(2)(b) in the Bronx, Officer Sherar observed § 87(2)(b) enter § 87(2)(b) which is a NYCHA location. Officer Sherar is familiar with § 87(2)(b) because it has an ongoing narcotics situation that has generated numerous complaints and arrests. Many arrests are made in the building's lobby. The lobby's entrance is usually locked, and drug dealers will follow a building's resident into the lobby and then sell narcotics from the locked location.

Officer Sherar observed § 87(2)(b) enter the lobby without a key. He believed that someone had just exited the building, and § 87(2)(b) grabbed the door before it closed and entered the lobby. This observation motivated Officer Sherar (whose shield was out) to ask § 87(2)(b) if she lived in the building, as he believed she may have been criminally trespassing. § 87(2)(b) said that she did. Officer Sherar asked § 87(2)(b) to see her identification, and she said that she did not have it. Officer Sherar then asked § 87(2)(b) for her name and which apartment she lived in, and asked if she could prove that she lived in the building. Officer Sherar suggested to § 87(2)(b) that showing him her keys would suffice as proof of residence. § 87(2)(b) put a key into a mailbox lock. Officer Sherar observed that the key fit and would turn, and to him this proved her residency. He did not look into her mailbox or ask to go up to her apartment.

Officer Sherar did not recall discussing with § 87(2)(b) the possibility that she was going to be placed under arrest. The interaction with § 87(2)(b) lasted for approximately one minute.

### **August 28, 2008**

#### **Memo Book Entries**

Officer Sherar had no memo book entries regarding § 87(2)(b)'s incident (encl. D3 – D4). At 4:00 p.m., he noted that he was with Sergeant [Trujillo]. At 9:00 p.m., Officer Sherar assisted with the apprehension of § 87(2)(b)

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<sup>1</sup> § 87(2)(b) reported that this incident occurred at 3:50 p.m.; the UF-250 prepared by Officer Sherar recorded the stop at 1:50 p.m.

### **CCRB Testimony**

Officer Sherar did not recall this incident. He did not recognize a photograph of § 87(2)(b). Being provided with additional details about this complaint did not prompt Officer Sherar's memory of the incident.

At 9:00 p.m., Officer Sherar assisted the 43<sup>rd</sup> Detective Squad with the apprehension of § 87(2)(b). Officer Sherar could not recall if the § 87(2)(b) apprehension was planned for 9:00 p.m. or if it came up suddenly.

### **Subject Officer: MIGUEL IGLESIAS**

- § 87(2)(b)-old, Hispanic, 6'1" tall, 200 pounds, dark brown hair, brown eyes
- *March 11, 2008: Assistant to the Field Intelligence Officer, Officer Sherar and Officer Allan Offley, RMP #§ 87(2)(b) (black Chevrolet Impala), likely in plainclothes, 12:00 p.m. to 8:35 p.m.*
- *August 28, 2008: Working with Field Intelligence, Sergeant Trujillo, uncertain if assigned to RMP, likely in plainclothes, 2:00 p.m. to 10:35 p.m.*

### **March 11, 2008**

#### **Memo Book Entries**

Officer Iglesias had no memo book entries regarding § 87(2)(b)'s incident and did not have any memo book entries from approximately 1:50 p.m. (encl. D9 – D11). His memo book indicated that at 3:45 p.m., he performed a vertical at § 87(2)(b) in the Bronx. At 4:00 p.m., Officer Iglesias made an arrest inside of § 87(2)(b).

### **CCRB Testimony**

On December 10, 2009, Officer Iglesias provided a CCRB statement (encl. D15 – D16). Between March 11, 2008 and August 28, 2008, Officer Iglesias was regular partners with Officer Sherar and Officer Offley. It was possible that Officer Sherar and Officer Offley worked together without Officer Iglesias.

Officer Iglesias did not recall this incident. He did not recognize a photograph of § 87(2)(b). Reviewing UF-250 #§ 87(2)(b) did not prompt Officer Iglesias' recollection of this incident, nor did being provided with additional details about the complaint. Officer Iglesias was familiar with § 87(2)(b) stating that it is a public housing building known for drug activity.

### **August 28, 2008**

#### **Memo Book Entries**

Officer Iglesias had no memo book entries regarding § 87(2)(b)'s incident (encl. D12 – D14). At 4:00 p.m., Officer Iglesias noted that he was with Sergeant Trujillo. At 9:00 p.m., Officer Iglesias assisted the detective squad with the apprehension of felon § 87(2)(b).

### **CCRB Testimony**

Officer Iglesias did not recall this incident. At 9:00 p.m., Officer Iglesias assisted the detective squad with the apprehension of a felon who was hiding outside of the 43<sup>rd</sup> Precinct. Officer Iglesias recalled that this apprehension was spontaneous and was not specifically planned for 9:00 p.m. on that evening. Being provided with additional details about this complaint did not prompt Officer Iglesias' memory of the incident.

## **NYPD Documents**

March 11, 2008

- **43<sup>rd</sup> Precinct Tour 3 Roll Call**

- The Tour 3 Roll Call indicates that Officers Iglesias, Sherar and Offley worked as Community Beat Officers from 12:00 p.m. to 8:35 p.m. Officers Steven Lancia, Emanuele Leggio and James Jacobberger also worked as Community Beat Officers on that day (encl. E1 – E13).

August 28, 2008

- **43<sup>rd</sup> Precinct Tour 3 Roll Call**

- The Tour 3 Roll Call indicates that Officer Iglesias worked conditions from 2:00 p.m. to 10:35 p.m. and Officer Sherar worked conditions from 12:25 p.m. to 9:00 p.m. (encl. E29 – E39). The Roll Call shows that Officers Martin Pastor, Alexander Velasquez and Robert Fischer were also working conditions.

- **43<sup>rd</sup> Precinct UF-250 Log**

- The UF-250 Log for August 28, 2008 shows that no UF-250s were prepared for § 87(2)(b) on that date (encl. E40).

- **43<sup>rd</sup> Precinct Daily Vehicle Assignment Sheet**

- The Daily Vehicle Assignment sheet shows that RMP #§ 87(2)(b) which Fleet Services reported was an unmarked brown vehicle assigned to the 43<sup>rd</sup> Precinct (encl. F48), was at the stationhouse during Tour 3 (encl. E41).

- **SPRINT**

- There is no SPRINT for this incident (encl. F17).

## **Status of Civil Proceedings**

§ 87(2)(b) has not filed a Notice of Claim with the City of New York as of December 22, 2009 with regard to the incident (encl. F15).

## **Civilian's Criminal History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## **Civilian's CCRB History**

§ 87(2)(b) has filed the following CCRB complaints: § 87(2)(b)

## **Subject Officers' CCRB History**

Officer Sherar has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. B1).

Officer Iglesias has been a member of service for three years and there are two substantiated CCRB allegations against him (encl. B2).

- CCRB #200813882; Abuse – Frisk, Abuse – Search of Person; charges recommended by CCRB; case pending at NYPD.

## Conclusion

### Identification of Subject Officers

§ 87(2)(b) was extremely confident that the same two officers, PO1 and PO2, interacted with her on both March 11, 2008 and August 28, 2008. She was able to provide pedigrees for both of these officers, describing PO1 as a white male who stood approximately 6' tall, weighed 180 – 90 pounds, was in his mid-20s and had black, curly hair. She described PO2 as a white male who stood approximately 6' tall, weighed 180 – 90 pounds, was in his mid-20s and had reddish-blond hair. Officer Sherar acknowledged that he interacted with § 87(2)(b) on March 11, 2008. Although he could not recall with whom he was working at that time, the 43<sup>rd</sup> Precinct Tour 3 Roll Call indicates that Officer Sherar, Officer Iglesias and Officer Allan Offley worked together. Officer Allan Offley is a § 87(2)(b)-old black male; Officer Iglesias is a § 87(2)(b)-old light-skinned Hispanic male who stands 6'1", weighs 217 pounds and has dark brown hair (encl. D8). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Though neither Officer Sherar nor Officer Iglesias acknowledged interacting with § 87(2)(b) on August 28, 2008, both officers were working conditions at the time of § 87(2)(b)'s alleged incident. Moreover, though neither officer could say who his partner was on that date, both officers have memo book entries made at 4:00 p.m. that show they were with Sergeant Trujillo.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Investigative Findings and Recommendations

#### Allegation A – Abuse of Authority: On March 11, 2008, Officer Erik Sherar questioned

§ 87(2)(b)

§ 87(2)(b) said that she went from her sixth floor apartment at § 87(2)(b) in the Bronx (a NYCHA location) to the building's lobby, and stood there waiting for her daughter. § 87(2)(b) alleged that while she was waiting in the lobby, an officer, identified through the investigation to be Officer Sherar, asked her if she lived in the building. Upon her verbal affirmation, Officer Sherar asked § 87(2)(b) for proof of residency, telling her to open her apartment door or provide her identification. § 87(2)(b) refused to open her apartment door and was not carrying identification. Officer Sherar then instructed § 87(2)(b) to open her mailbox and, after initial resistance, she did so. According to § 87(2)(b) the officer looked inside of her mailbox. Officer Sherar acknowledged that he stopped § 87(2)(b) stating that he decided to do so because he observed her enter the lobby of § 87(2)(b) without a key. This lobby has a high incidence of narcotics sales; the lobby's entrance is usually a locked, and drug dealers follow residents into the lobby and then sell narcotics from the locked location.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Pursuant to a request for information[,]  
...a police officer may ask questions regarding the identity...of an individual and his or her

reason for being in a particular location” (encl. A3). A request for information must be based on “some objective credible reason” (encl. A2). At NYCHA locations, “police officers have the authority to keep buildings free of trespassers”; however, “police have no right to approach and request information if there is nothing unusual or suspicious in a person’s behavior” (encl. A4 – A5). § 87(2)(g)

–, Kamins references *People v. Wighfall* and *People v. Hendricks* as cases in which civilians demonstrated “unusual” or “suspicious” behavior that led to officers’ legitimate requests for information (encl. A5). *People v. Wighfall* found that “police may approach [a] person in [a] vestibule whose behavior is inconsistent with that of resident or guest, *e.g.*, standing in [the] lobby for no apparent reason and looking at mail boxes.” *People v. Hendricks* found that a “level one approach [was] permissible merely because [the] defendant stayed in [the] vestibule.” § 87(2)(g)

**Allegation B – Abuse of Authority: On August 28, 2008, Officer Erik Sherar stopped**

§ 87(2)(b)

**Allegation C – Abuse of Authority: On August 28, 2008, Officer Miguel Iglesias stopped**

§ 87(2)(b)

§ 87(2)(b) stated that she exited her building, § 87(2)(b) in the Bronx, spoke with a male outside of the building, and then hurriedly walked toward a nearby park. § 87(2)(b) alleged that while on the way to the park, she observed a dark brown vehicle following her. Officer Sherar and Officer Iglesias then leapt out of the vehicle, stating, “Stop!” The officers then asked § 87(2)(b) a series of questions, with Officer Sherar asking § 87(2)(b) why her arm was in a sling and if she used drugs. § 87(2)(b) was released without a summons and she was not arrested. Both Officers Sherar and Iglesias had no memo book entries regarding and no recollection of this alleged incident. § 87(2)(g)

**Allegation D – Abuse of Authority: On August 28, 2008, Officer Erik Sherar searched**

§ 87(2)(b)

§ 87(2)(b) alleged that during the stop, Officer Sherar instructed § 87(2)(b) to open her mouth. Officers Sherar and Iglesias then both looked into § 87(2)(b) s mouth. § 87(2)(g)



Team: \_\_\_\_\_

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Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date